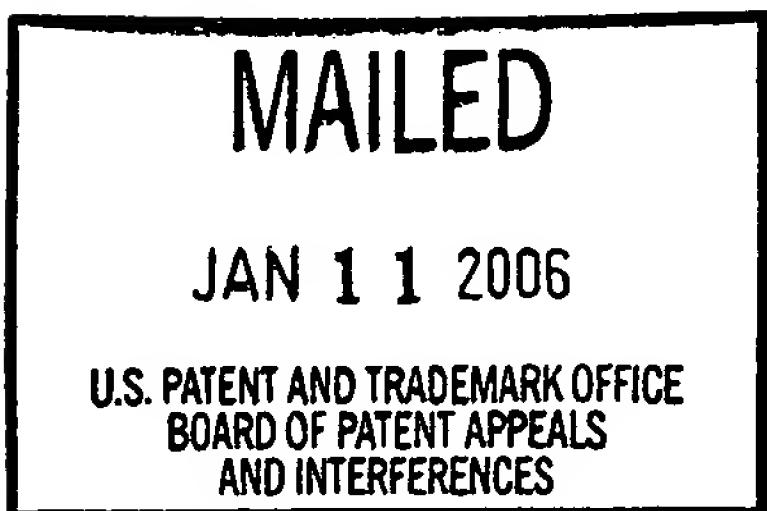


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte CHRISTIAN TOURRE, SYLVAIN BRETEAU and PIERRE LAURENT



Appeal No. 2005-2620
Application No. 09/852,712

ON BRIEF

Before FRANKFORT, PATE, and CRAWFORD, Administrative Patent Judges.
CRAWFORD, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 16 to 22 and 30 and 31. Claims 1 to 15 have been canceled and claims 23 to 29 have been withdrawn from consideration.

The appellants' invention relates to a packet of stacked absorbent paper tissues (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

The prior art

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Williams	3,129,811	Apr. 21, 1964
Rugenstein et al. (Rugenstein)	4,460,088	July 17, 1984
Focke et al. (Focke)	5,018,625	May 28, 1991
Wewers	5,244,025	Sep. 14, 1993

Admitted Prior Art (APA) as disclosed on page 4 of appellants' disclosure and depicted in Figures 1 and 2.

The rejections

Claims 16 to 22 and 30 to 31 stand rejected under 35 U.S.C. § 103 as being unpatentable over APA in view of Wewers and Williams.

Claims 16 to 22 and 30 to 31 stand rejected under 35 U.S.C. § 103 as being unpatentable over Focke or Rugenstein in view of Wewers and Williams.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer (mailed November 17, 2004) for the examiner's complete reasoning in support of the

rejections, and to the brief (filed September 30, 2004) and reply brief (filed January 18, 2005) for the appellants' arguments thereagainst.

Opinion

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

Both of the rejections in this case are made pursuant to 35 U.S.C. § 103. We initially note that the test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). Moreover, in evaluating such references it is proper to take into account not only the specific teachings of the references but also the inferences which one skilled in the art would reasonably be expected to draw therefrom. In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

In rejecting claims 16 to 22 and 30 to 31, the examiner relies on the APA as depicted in Figures 1 and 2 and discussed on page 4 of appellants' specification. The examiner, recognizing that the APA does not describe a tissue packet having a square rear face and a square front face or the particular manner in which the tissues are

folded, as recited in claim 16, states that the change in the shape of an object is generally recognized as being within the level of skill in the art and absent any showing of unexpected results does not patentably distinguish the claims. The examiner also cites Wewers for teaching the square shape of a package.

In regard to the manner of folding of the tissues, the examiner relies on Figure 6 of Williams. The examiner concludes that it would have been obvious to fold the absorbent paper in the manner taught by Williams for the package of the APA to store the absorbent paper in a compact manner.

We will not sustain this rejection. In our view, it would not have been obvious to modify the tissue packet of APA so as to have a square rear and front face or to fold the tissue packet of APA in the manner recited in claim 16.

Firstly, the examiner has failed to establish that it would have been obvious to fold the tissue as recited in claim 16. Williams does not describe three fold lines and two orthogonal fold lines which define sixteen equal areas within the tissue. Williams' Figure 6 depicts three fold lines and three orthogonal fold lines which define 16 equal areas within the tissue (See also Figure 3). In addition, Williams does not describe the direction of folding of the panels so that the interior surface of the two outer panels is folded in a outwardly manner with respect to the two inner panels, as recited in claim 16. Figure 6 of Williams does not, as asserted by the examiner describe a folding

method at all. Figure 6 of Williams depicts the two layer construction of the sheet (col. 2, lines 28 to 29; col. 5, lines 24 to 27).

With respect to the recitation in claim 16 of a square shaped tissue packet, appellants' specification states the square shape of the tissue package improves the rigidity of the package and increases the packages resistance to crushing (specification at pages 5 and 6). The specification details tests that were undertaken to test the resistance to crushing of the package and the bending strength of the package which show that the shape of the package greatly improves the resistance to crushing and strength of the package (specification at page 6).

Therefore, we do not agree with the examiner that modifying the APA packet so as to have a square shape is an obvious matter of design choice. Rather, the shape of the packet or package and the tissues which is created by the folding method results in significant advantages and solves several problems. See In re Kuhle, 526 F.2d 553, 554, 188 USPQ 7, 8 (CCPA 1975).

In regard to the examiner's reliance on the Wewers reference to describe the square shape, we are of the view that there is no motivation to combine the teachings of Wewers and APA. APA describes a tissue packet and Wewers describes a cloth covering for china. The examiner states that Wewers is only cited to show the shape not the contents (answer at page 3). This is not enough. In order to establish a prima facie case of obviousness, the examiner must show that there would have been some

motivation to combine the teachings of the APA and the Wewers reference. This the examiner has not done. There is simply nothing on this record which would have motivated the skilled artisan to combine the teachings of APA with Wewers.

In view of the foregoing, we will not sustain the examiner's rejection of claim 16 and claims 17 to 22 dependent therefrom.

Claims 30 and 31 recite that the wrapper and tissue stack defining the packet have a square front face and rear face. Therefore, we will not sustain the rejection as it is directed to claims 30 and 31 because as we stated above we find that it would not have been obvious to modify APA so as to have a square front face and rear face. In addition, claims 30 and 31 recite that there are three fold lines and two fold lines which define sixteen areas which we stated above is not described in Williams. Therefore, this is an additional reason for not sustaining this rejection. Further, claims 30 and 31 recite that the three fold lines form an M shape when viewed from an end of the tissue. As we stated above, Figure 6 of Williams does not depict a folding method but rather two panels which form the tissue panel. Therefore, Williams does not describe the M shape and thus this is a further reason for not sustaining the rejection.

We turn next to the examiner's rejection of claims 16 to 22 and 30 and 31 under 35 U.S.C. § 103 as being unpatentable over Focke or Rugenstein in view of Wewers and William. The examiner relies on Focke or Rugenstein for describing the subject matter of the claims except that neither Focke nor Rugenstein describes a tissue packet

having a square front face and a square rear face or the folding directions recited in claim 16 and claims 30 and 31. The examiner's rationale with respect to the above noted differences is the same as the examiner's rationale with regard to the rejection based on the combination of APA, Wewers and Williams discussed above. Therefore, we will not sustain this rejection for the same reasons given above with respect to the APA, Wewers and Williams rejection.

The examiner's decision is reversed.

Reversed

Charles E. Frankfort
CHARLES E. FRANKFORT

CHARLES E. FRANKFORT¹

Administrative Patent Judge


WILLIAM F. PATE, III

Administrative Patent Judge


MURRIEL E. CRAWFORD
Administrative Patent Judge

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